# STATE OF MICHIGAN

# COURT OF APPEALS

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JONALYN LUNDBERG,

Plaintiff-Appellant,

v

ESCANABA PAPER COMPANY, MEAD CORPORATION, and M.J. ELECTRIC, INC.,

Defendants-Appellees.

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UNPUBLISHED
November 14, 1997

No. 196245
Delta Circuit Court
LC No. 94-012366-NO

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant Mead Corporation and its wholly owned subsidiary, Escanaba Paper Company, summary disposition of plaintiff's claim for damages arising out of a slip and fall that occurred in a parking lot owned by defendant Mead.[1] We affirm.

Plaintiff argues that the frozen tire rut over which she tripped and fell in defendant's parking lot during the dark morning hours of February 21, 1994 was not an open and obvious hazard. We disagree. Plaintiff testified that although there was at least one light in the parking lot, it was "too dark to really see the ground" as she made her way across the lot to begin work. However, plaintiff had crossed the parking lot under similar conditions on the four previous days as well as four times during the daylight hours at the end of work. She was thus familiar with the general condition of the parking lot and admittedly knew that it contained frozen tire ruts.

It is well established in Michigan that a premises owner's duty to exercise due care to protect a business invitee from latent or hidden defects does not extend to hazards that are known or obvious. *Riddle v McLouth Steel Products Corp*, 440 Mich 85, 90-92; 485 NW2d 676 (1992). The fact that the specific location of each frozen ridge changed with the daily freeze-thaw cycle did not make the hazard less open and obvious. The risk of harm to plaintiff from each new ridge that formed was not unreasonable where knowledge of the general condition of the lot alone was enough to cause a reasonably prudent person to take care in crossing the lot to avoid the ridges precisely because it was dark and he or she could trip and fall. Under plaintiff's argument, defendants would have had to

anticipate on a daily basis the harm presented by each and every new ridge that may have formed during the night and to then warn of or protect from each new ridge that had formed on a daily basis. Defendants' duty does not extend that far. Defendants' duty is to protect plaintiff from unreasonable risk of harm. *Bertrand v Alan Ford Inc*, 449 Mich 606, 614; 537 NW2d 185 (1995). Defendants did not owe plaintiff a duty to warn or protect on a daily basis because she already knew of the general condition of the lot and it was reasonable to expect her to avoid the ridges in it.

Plaintiff also claims that even if the danger was open and obvious, a genuine issue of material fact existed as to whether the condition of the parking lot was sufficiently unusual so as to create an unreasonable risk of harm. We disagree. With regard to the open and obvious danger doctrine,

> if the risk of harm remains unreasonable, despite its obviousness or despite knowledge of it by the invitee, then the circumstances may be such that the invitor is required to undertake reasonable precautions. [*Bertrand, supra* at 611.]

Only where there is something unusual about the hazard because of its "character, location, or surrounding conditions" will the duty to exercise reasonable care remain. *Id*. at 617. The hazard that plaintiff encountered was of the type of everyday occurrence that people encounter in the winter in the Upper Peninsula and would cause a reasonably prudent person to look where he or she was going and to take appropriate care for his or her own safety. *Id*. at 616-617. A reasonably prudent person, because it was difficult to see, would have walked slowly and carefully and thus have avoided tripping on the relatively small ruts at issue here. The risk of harm to plaintiff was not unreasonable. A policy of encouraging people to take reasonable care for their own safety precludes imposing a duty on the possessor of land to make ordinary hazards "foolproof." *Id*.

We affirm.

/s/ William B. Murphy
/s/ Harold Hood
/s/ Richard A. Bandstra

[1] Plaintiff's action against defendant M.J. Electric, Inc. was dismissed pursuant to stipulation.